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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Systems Research and Applications Corporation; Booz Allen Hamilton, Inc.

File: B-299818; B-299818.2; B-299818.3; B-299818.4

Date: September 6, 2007

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Robert J. Symon, Esq., Douglas L. Patin, Esq., Jeremy Becker-Welts, Esq., and Steven A. Pozefsky, Esq., Bradley Arant Rose & White LLP, for Jacobs Technology, the intervenor.

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Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Admission of a consultant to a GAO protective order was appropriate, over the objection that the consultant once held a position with the protester and that the consultant's daughter was currently employed by the protester, where the record shows that the consultant had no continuing interest in the protester and the consultant's daughter held a relatively low-level position with the protester in a division that was unrelated to the work to be performed under the protested contract.

2. Protest is sustained in a negotiated procurement for award on a "best value" basis, which provided for evaluation of the degree to which offerors' proposals met or exceeded requirements, where the agency failed to qualitatively assess the merits of the offerors' differing approaches.

DECISION

Systems Research and Applications Corporation (SRA) and Booz Allen Hamilton, Inc. (BAH) protest the award of a contract to Jacobs Technology under request for proposals (RFP) No. FA8721-06-R-0001, issued by the Department of the Air Force for engineering and technology acquisition support services (ETASS) for the

agency's Electronic Systems Center (ESC). The protesters challenge the agency's evaluation of proposals, conduct of discussions, and source selection decision.¹

We sustain the protests because the record does not show that the agency qualitatively assessed the differences in the offerors' proposals, as required by the RFP.

BACKGROUND

The RFP provides for the award of an indefinite-delivery, indefinite-quantity (ID/IQ) contract for a base-year with 2 option years, under which the agency will award fixed-price, labor-hour, or cost-plus-award-fee task orders for advisory and assistance services supporting the ESC. Specifically, offerors were informed that the contract objectives

are to provide disciplined systems/specialty engineering and technical support, using established government, contractor and tailored industry processes that encompass the practices and requirements of the ESC Engineering Directorate . . . Capability Maturity Model Integration (CMMI) framework.

RFP, Statement of Objectives (SOO) § 2.1. Historically, ESC's engineering and technical support has been provided by government and federally funded research and development center personnel and contractor personnel working under the Information Technology Services Program (ITSP) II task orders.² Contracting Officer's Statement (SRA Protest) at 2.

The RFP SOO identified 13 ESC support objectives, including the provision of

system/program engineering, technical support and technical training, for the acquisition, integration, sustainment, continued evolution, deployment/fielding and installation, operations and field

¹ Although the protests were consolidated, the Air Force provided separate reports in response to the protests filed by SRA and BAH. For the most part, the reports are identical with respect to the documents provided and how they were identified in the reports (i.e., tab numbers). In this decision, we refer to the agency report submitted in response to the SRA protest, except where it is necessary to cite to differing documents in the agency report submitted in response to BAH's protest.

² ITSP II consists of blanket purchase agreements issued under the General Services Administration Federal Supply Schedule (FSS), under which task orders were issued for advisory and assistance services support for ESC. Contracting Officer's Statement (SRA Protest) at 2.

support of ESC Command, Control, Communications and Computers, Intelligence, Surveillance, Reconnaissance (C4ISR), Business and Enterprise Resource Planning (ERP) systems and information systems.

RFP, SOO § 2.1.a. The RFP also identified three functional support objectives, including

[p]rovid[ing] engineering and technical support to ESC [Engineering Directorate] in achieving its goals for CMMI process proficiency at the program level up through the wing level, to include but not limited to, engineering expertise in support of the planning, development and implementation of a robust engineering function at ESC.

Id., § 2.2.a.

The RFP provided for award on a “best value” basis, and stated the following evaluation factors and subfactors:

Mission Capability Factor	
	Subfactor 1: Technical Approach
	Subfactor 2: Transition Planning
	Subfactor 3: Personnel
	Subfactor 4: Management Practices
Proposal Risk Factor	
	Subfactor 1: Technical Approach
	Subfactor 2: Transition Planning
	Subfactor 3: Personnel
	Subfactor 4: Management Practices
Past Performance Factor	
Cost/Price Factor	

RFP § M.2.1. The mission capability, proposal risk, and past performance factors were stated to be of equal weight, and to be each, individually, more important than the cost/price factor. The subfactors within the mission capability and proposal risk factors were stated to be of equal importance. Id.

Offerors were informed that proposals would be evaluated under the mission capability factor using the color and adjectival ratings identified in the Air Force’s Mandatory Procedure (MP) 5315.3,³ and that proposal risk would be assessed using

³ A “blue/exceptional” rating reflected a proposal that

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the risk ratings identified in that document. RFP § M.3.1. In addition, the RFP described, for each management capability and proposal risk subfactor, the areas upon which the agency’s evaluation would focus.

For example, for the transition planning subfactors, the RFP provided that the agency would evaluate the offerors’ approaches to transitioning from the current advisory and assistance services support to the ETASS services with an emphasis on evaluating:

- A. The degree to which the offeror has proposed a comprehensive, detailed, effective plan to provide ETASS services while ensuring mission requirements are satisfied.
- B. The degree to which the offeror demonstrates the capability to have available the resources needed to efficiently and effectively support the objectives at IDIQ/[task order] start.

RFP § M.3.1.2. Similarly, for the technical approach subfactors, offerors were informed that the agency would, among other things, evaluate the “degree to which the offeror presents a clear understanding and an innovative approach to fulfill all the objectives outlined in the ETASS IDIQ SOO” and the “soundness and efficiency of the offeror’s tailoring of their standardized approach to fulfill all the objectives of the individual ETASS task orders.” *Id.* § M.3.1.1. For the personnel subfactors, offerors were informed that the agency would evaluate, among other things, the “degree to which” the offerors proposed “a sound, realistic and standardized approach for obtaining/training/retaining qualified personnel to perform contract objectives” and the degree to which the offerors “present[] a clear understanding and ability to support ESC with reach back, potential surge situations and/or draw downs.” *Id.* § M.3.1.3. For the management practices subfactors, the RFP provided for an evaluation of the soundness of the offerors’ “overall team management, business practices and organizational structure,” as well as the extent to which the

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[e]xceeds specified minimum performance or capability requirements in a way beneficial to the government; proposal must have one or more strengths and no deficiencies to receive a blue.

A “green/acceptable” rating reflected a proposal that

[m]eets specified minimum performance or capability requirements delineated in the [RFP]; proposal rated green must have no deficiencies but may have one or more strengths.

MP5315.3 § 5.5.1.

offerors had or would have potential organizational conflicts of interest (OCI). Id. § M.3.1.4.

The RFP provided for an evaluation of the offerors' relevant experience performed during the 5 years prior to the issuance date of the solicitation. Offerors were informed that the agency, in assessing the firms' past performance, would assign relevance ratings of either highly relevant, relevant, somewhat relevant, or not relevant, and quality ratings of exceptional, very good, satisfactory, marginal, or unsatisfactory.⁴ Based upon its relevance and quality ratings, the agency would assign a confidence rating of high confidence, significant confidence, satisfactory confidence, unknown confidence, little confidence, or no confidence. Id. § M.3.2.

The RFP provided for the evaluation of the sum of the offerors' proposed prices for seven ETASS task orders, which were identified in the solicitation.⁵ Id. § M.3.3.2. Offerors were further informed that their proposals would be evaluated at the "Most Probable Cost (MPC)" as determined by the "Cost/Price Realism Assessment (CPRA)," which the RFP stated would be calculated as follows:

- A. Labor Hour (LH): Labor Hour [contract line item] prices for the seven initial task orders will be evaluated at the MPC/CPRA for the Basic and two (2) Option years.
- B. Cost Reimbursable (CR): The Cost Reimbursable effort will be evaluated at the amounts provided by the Government in the RFP.
- C. All rates on the IDIQ B-Table will be examined for reasonableness and realism.⁶

Id. § M.3.3.2. The RFP further stated that the agency would evaluate the extent to which offerors' proposed prices indicated a clear understanding of the RFP's objectives and reflected a sound approach to satisfying those objectives, and further warned offerors that prices that were assessed as unrealistically low or high without

⁴ "Highly relevant" was defined by the RFP as "[p]ast/present performance effort involve[ing] essentially the same magnitude of effort and complexities this solicitation requires." "Relevant" was defined as "[p]ast/present performance effort involve[ing] much of the magnitude of effort and complexities this solicitation requires." RFP § M.3.2.3.

⁵ These initial task orders were to support seven different ESC units. Contracting Officer's Statement (SRA Protest) at 4.

⁶ The B-Tables requested the offerors' loaded labor rates for each of the seven task orders. RFP attach. 2, B-Tables.

explanation would be considered under the proposal risk subfactor as indicating a lack of understanding of the technical objectives. Id. § M.3.3.4.

Offerors were informed that they must satisfy all of the solicitation's objectives, terms and conditions, and that failure to do so could result in the offer being removed from consideration for award. Id. § M.4. One of the RFP's terms was the requirement that the contractor

conform to the stated ESC overall goals of 35% Small Business Opportunities, which will include at a minimum 7.5% Small Disadvantaged Business (SDB), 3.75% Service Disabled Veteran Owned Business (SDVOSB), 3.75% Women-Owned Small Business (WOSB), and 0.1% Historically Underutilized Business Zone (HUBZONE) with the initial proposal, as well as, ensuring that the goals are maintained during execution. The socio-economic goals will be evaluated at the aggregate total of the dollars obligated on the task orders. If applicable, the resulting subcontracting plan will become an attachment to the contract.

Id. § ESC-H115, Socioeconomic Goals.

Detailed instructions were provided for the preparation of proposals and for oral presentations. Specifically, the RFP provided that offerors would address the mission capability and proposal risk subfactors only in an oral presentation, which would include consideration of up to 223 slides that were to be submitted with the offeror's proposal.⁷ Id. § L.2.1.5.3. The instructions also informed offerors of the information, data, and explanations that the offerors should provide in response to each evaluation factor and subfactor. For example, with respect to the technical approach subfactors, the RFP provided that the offerors should describe their approach "that encompasses the practices and requirements of the ESC/[Engineering Directorate] tailored CMMI framework, and how they would be used to satisfy" the SOO. Id. § L.4.2.2.1(a)(1). With respect to the transition planning subfactors, offerors were to address their plans to fulfill the SOO "while transitioning from current [advisory and assistance services] contractor support to the new ETASS paradigm of systems engineering and technical services and capabilities." Id. § L.4.2.2.2(a).

Offerors were also requested to provide their "basis for estimates" (BOE) for each task order that described the "basis, rationale, metrics and estimating methodology and historical database used to derive the proposed labor hours," and that identified an hourly estimate by labor category by year for each task order. The BOE also

⁷ The RFP also established time limits for each offeror's oral presentation. RFP § L.2.1.5.1.

required offerors to “include a comparison of the proposed hours to historical experiences on similar/analogous projects and rationale for the proposed labor-skill mix.” Id. § L.6.3.2.

The Air Force received proposals from five offerors, including SRA, BAH, and Jacobs, by the due date for receipt of proposals. The agency’s source selection evaluation team (SSET) received oral presentations (which included a period of questions and answers) from the offerors with respect to the mission capability and proposal risk subfactors. The evaluators individually reviewed and rated the offerors’ proposals, and then met as a team to discuss their individual ratings and to agree to consensus ratings for the offerors’ proposals under each subfactor. See Hearing Transcript (Tr.) at 32-33, 199-202, 215, 235-38, 260-63; Supplemental Contracting Officer’s Statement (SRA Protest) at 14. Discussions were conducted, and revised proposals received from the five offerors. The protesters’ and awardee’s final proposals were evaluated by the SSET as follows:

	Jacobs	SRA	BAH
1. Mission Capability			
Technical Approach	Green/Acceptable	Green/Acceptable	Green/Acceptable
Transition	Green/Acceptable	Green/Acceptable	Green/Acceptable
Personnel	Green/Acceptable	Green/Acceptable	Green/Acceptable
Management Practices	Blue/Exceptional	Green/Acceptable	Green/Acceptable
2. Proposal Risk			
Technical Approach	Low	Low	Low
Transition	Low	Low	Low
Personnel	Low	Low	Low
Management Practices	Low	Low	Low
3. Past Performance⁸	High Confidence	Significant Confidence	Significant Confidence
4. Price (Proposed)	\$260.0 million	[\$Deleted]	[\$Deleted]

AR, Tab 30, SSET Decision Briefing to Source Selection Authority (SSA), at 111, 119; Tab 31, Proposal Analysis Report (PAR), at 32-52, 59.

As detailed below, the green/acceptable/low risk ratings assessed for the protesters’ and awardee’s proposals under most of the subfactors of the mission capability factor and proposal risk factor reflected the SSET’s judgment that, although the firms proposed differing approaches, their proposals were merely acceptable, meeting requirements, and presented low proposal risk.

⁸ The RFP identified high confidence rating as being better than significant confidence. RFP § M.3.2.5.

For example, under the technical approach subfactors of the mission capability and proposal risk factors, the SSET found that the protesters and awardee demonstrated a clear understanding of the ESC SOO, proposed adequate approaches to controlling systems engineering processes, and tailored their respective approaches for each task order. In short, the evaluators found that all of the offerors presented proposals that, although they proposed a “different path” to systems engineering improvement, would improve the ESC systems engineering processes. AR, Tab 31, PAR, at 36-37.

Under the transition planning subfactors, the SSET noted that the offerors’ approaches differed in part based on whether the offeror team consisted of personnel or subcontractors with ESC program experience through the performance of ITSP II task orders (BAH and SRA), or whether the offeror team did not currently have personnel or subcontractors with more than a broad familiarity with ESC programs (Jacobs). See, e.g., id. at 41. In this regard, the evaluators assessed as a weakness in Jacobs’s proposal under the proposal risk transition planning subfactor that the firm did not demonstrate current knowledge of ESC programs, which introduced “risk that mission requirements will not be satisfied during transition,” and it could take “considerable time and manpower for the Government to bring the contractor ‘up to speed’ on program status, current challenges, risk, program requirements, etc.”⁹ Id. at 40. The SSET nevertheless concluded that all of the firms’ proposals satisfied the agency’s requirements and assigned the firms’ proposals green/acceptable with low risk ratings under these subfactors.

The offerors’ green/acceptable with low risk ratings under the personnel subfactors reflected the SSET’s judgment that all of the firms had proposed a realistic plan for obtaining, training, and retaining qualified personnel to satisfy the contract requirements. Id. at 45.

Unlike the other management capability/proposal risk subfactors, the SSET found that Jacobs’s proposal merited a higher rating under the management practices subfactors than did SRA’s and BAH’s. Specifically, the SSET found that

Jacobs’s proposal for Management Practices is EXCEPTIONAL (Blue), and exceeded the requirements, and is significantly better than all the other Offerors[’] proposals. Jacobs’s “seamless teaming arrangements” (single set of B[-]tables/rates,¹⁰ common

⁹ Jacobs’s initial proposal was assessed as moderate risk under the proposal risk transition planning subfactor because of Jacobs’s “lack of current program knowledge” that would require “[g]overnment time and manpower.” See AR, Tab 26, SSET Initial Proposal Briefing to SSA, at 106.

¹⁰ The Air Force states that the reference to the single set of B-table/rates was, although a true statement, not a basis for the exceptional/low risk rating under the
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processes/tools used by the prime and subs) provides the best overall team management, business practices, and organizational structure to properly and effectively administer ETASS. Jacobs had no administrative burden to the Government or negative performance effects on the contract related to [OCI] mitigation. All the rest of the Offerors' proposals were rated ACCEPTABLE (Green). They all had policies and procedures that their teams would use, software tools (scheduling, cost, portal, . . . etc.) to aid in managing them, and the potential burden and negative impacts to contract performance related to OCI mitigation were considered minor and appropriately addressed in each Offeror's mitigation plan.

Id. at 51.

Jacobs's superior past performance factor assessment reflected the agency's performance confidence assessment group's (PCAG) judgment that, although all of the offerors' performance records established their ability to satisfy the ETASS requirements, "Jacobs distinguished itself from the others and received a High Confidence rating based on its record that showed exceptional performance on Highly Relevant contracts." The PCAG noted that SRA and BAH had a record of exceptional or very good performance, but did not have the "same level of Highly Relevant work as Jacobs." Id. at 52.

The offerors' proposed prices were evaluated by the CPRA team that assessed the realism of the offerors' proposed labor hours for their respective technical approaches and by a cost team that assessed the realism of the firms' proposed fixed labor rates.¹¹

The evaluation results were presented to the SSA in a number of briefings at various stages in the procurement, beginning with the initial consensus evaluation and continuing through the competitive range determination and final consensus evaluation. See AR, Tab 26, Initial Proposal Briefing to SSA; Tab 28, Competitive Range Briefing to SSA; Tab 30, SSET Decision Briefing to SSA. The SSA concluded that Jacobs's proposal reflected the best value to the government. With respect to SRA's proposal, the SSA concluded that Jacobs's higher ratings under the management practices subfactor of the mission suitability factor and the past

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mission capability management practices subfactor. Rather, it was Jacobs's offer of [Deleted] that contributed to the exceptional rating. See Contracting Officer's Statement (SRA Protest) at 32.

¹¹ The CPRA team consisted of some SSET team members and some of the cost team members. AR, Tab 31, PAR, at 84-85.

performance factor outweighed SRA's lower proposed price. With respect to BAH's proposal, the SSA noted that BAH's proposal, which had a higher evaluated price than Jacobs's, presented no advantages over Jacobs's proposal. AR, Tab 33, Source Selection Decision, at 9-10. Award was made to Jacobs, and these protests followed.

ADMISSION TO PROTECTIVE ORDER

Protective orders were issued in connection with these protests in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.4 (2007), which allow the limited release of confidential or source selection sensitive information to counsel and consultants admitted under the protective orders.

The Air Force and Jacobs objected to the admission of a consultant—a university professor—who was retained by BAH's counsel to assist in the representation of that protester under the direction and control of that attorney. Specifically, they objected that the consultant had substantial involvement in the business affairs of BAH during the course of his career as a BAH officer and stockholder for nearly twenty years (concluding in May 2004) and that his daughter was currently employed at BAH. The parties, however, did not challenge the veracity of the consultant's representations or BAH's need for his assistance or assert that the consultant was involved in competitive decision-making.

In response, BAH stated that the consultant was a retired BAH partner, who no longer held any position with and had no financial interest in BAH, given that he had divested himself of all BAH stock in 2005. In addition, the consultant's daughter, who had only recently graduated with a bachelor's degree, held a relatively low-level position (well below the management level) with BAH and worked in a division that would have no involvement with the ETASS contract work.

In considering the propriety of granting or denying an applicant admission to a protective order, we review each application in order to determine whether the applicant is involved in competitive decision-making and whether there is otherwise an unacceptable risk of inadvertent disclosure of protected information should the applicant be granted access to protected material. See Robbins-Gioia, Inc., B-274318 et al., Dec. 4, 1996, 96-2 CPD ¶ 222 at 9-10, citing U.S. Steel Corp. v. United States, 730 F.2d 1465 (Fed.Cir. 1984); see also McDonnell Douglas Corp., B-295694.2, B-295694.3, June 16, 1995, 95-2 CPD ¶ 51 at 7-8. With respect to the applications of consultants to a protective order, we consider and balance a variety of factors, including our Office's desire for assistance in resolving the specific issues of the protest, the protester's need for consultants to pursue its protest adequately, the nature and sensitivity of the material sought to be protected, and whether there is opposition to an applicant expressing legitimate concerns that the admission of the applicant would pose an unacceptable risk of inadvertent disclosure. See EER Sys. Corp., B-256383 et al., June 7, 1994, 94-1 CPD ¶ 354 at 9,

citing Mastushita Elec. Indus. Co., Ltd. v. United States, 929 F.2d 1577 (Fed. Cir. 1991).

We admitted the consultant to the protective order based upon our finding that his admission did not pose more than a minimal risk of inadvertent disclosure. Specifically, we concluded that, although it is true that the consultant held, at one time, a position with BAH that would appear to have precluded his admission under a GAO protective order, the consultant left that position several years ago and had no continuing financial interest in the protester, having divested himself of all BAH stock. There was no indication from the consultant's application or from anything presented by the parties that his future activities, given his full-time position as a university professor, would pose more than a minimal risk of inadvertent disclosure. With respect to the consultant's daughter, we recognized that she was an employee of the protester, but found that this did not automatically require the denial of his application for admission. Given his daughter's relatively low-level position with the protester in a division unrelated to the work to be performed under the ETASS contract, we found that this also did not demonstrate an unacceptable risk of inadvertent disclosure of protected information.

DISCUSSION

The protesters challenge the agency's evaluation of the protesters' and awardee's technical proposals. They contend that the agency failed to adequately document its evaluation and did not otherwise reasonably evaluate the proposals in accordance with the solicitation's evaluation scheme.

Lack of Documentation

In determining whether a particular evaluation conclusion is rational, we examine the record to determine whether the judgment was reasonable and in accord with the evaluation criteria listed in the solicitation. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Such judgments are by their nature often subjective; nevertheless, the exercise of these judgments in the evaluation of proposals must be reasonable and must bear a rational relationship to the announced criteria upon which competing offers are to be selected. Hydraudyne Sys. and Eng'g B.V., B-241236; B-241236.2, Jan. 30, 1991, 91-1 CPD ¶ 88 at 4.

In order for us to review an agency's evaluation judgment, an agency must have adequate documentation to support its judgment. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. In this regard, the Federal Acquisition Regulation (FAR) requires that agencies sufficiently document their judgments, including documenting the relative strengths, deficiencies, significant weakness, and risks supporting their proposal evaluations. See FAR §§ 4.801(b), 15.305(a), 15.308; Century Envtl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4. While an agency is not required to retain every

document or worksheet generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow review of the merits of a protest. See KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447 at 7; see also e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8 (it is a fundamental principle of government accountability, even when using simplified acquisition procedures, that an agency be able to produce a sufficient record to allow for a meaningful review where its procurement actions are challenged). Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., *supra*.

In determining the rationality of an agency's evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments, explanations, and hearing testimony. Northwest MEP Servs., Inc., B-285963.5 *et al.*, Jan. 5, 2001, 2001 CPD ¶ 28 at 7. While we consider the entire record, including the parties' later explanations and arguments, we accord greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

Here, the contemporaneous evaluation documents in the record were not sufficient to allow us to review the reasonableness of the SSET's judgments without further explanation.¹² For example, although the SSET members each individually evaluated the firms' technical proposals, see Contracting Officer's Statement (SRA Protest) at 8, the vast majority of the evaluator worksheets¹³ in the record were not completed

¹² Jacobs disagrees that the record was insufficiently documented, citing our decision in G&N, L.L.C., B-285118 *et al.*, July 19, 2000, 2002 CPD ¶ 3, and arguing that there was no requirement that the agency provide narrative discussions of its evaluation conclusions. The sufficiency of an agency's subjective evaluation judgments is necessarily something which must be decided on a case-by-case basis. In G&N, we found sufficient the agency's evaluation documentation that did not include narrative evaluations (even though the solicitation indicated that the evaluators would prepare narrative evaluations). In that case, however, unlike the situation presented here, the evaluation documentation contained sufficient detail and was adequately supplemented by the agency's explanations of its evaluation. *Id.* at 6-8.

¹³ The worksheets for the mission capability subfactors provide a space for an evaluator to describe "what is offered"; to indicate whether the proposal met, exceeded, or failed to meet specified performance capability requirements; to identify strengths, uncertainties, and deficiencies; to identify the color rating assigned; and to indicate whether an evaluation notice was required. See, e.g., AR, Tab 12, SRA Initial Mission Capability Evaluation Worksheets for the Technical

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and contain only the notation “N/C,” which indicated that the evaluator had “no comment.”¹⁴ See Tr. at 423. There were some worksheets that were completed by individual evaluators that identified and detailed strengths for proposals that were not accepted by the SSET in its consensus judgment. However, the only contemporaneous documentation of the SSET’s judgment concerning its failure to accept these evaluator strengths were such general comments as the “Group did not capture as a strength.” E.g., AR, Tab 12, SRA Initial Mission Capability Worksheet for Technical Approach, at 17; Tr. at 210-11.

Other consensus evaluation documents in the record, such as the PAR and SSA briefing slides, and the source selection decision, describe the basic elements of each offeror’s proposal under each of the evaluation factors and subfactors, but do not discuss, to any meaningful degree, the differences between the proposals. That is, although the PAR describes each offeror’s basic approach for each mission capability/proposal risk subfactor, there is no qualitative assessment of the merits of the offerors’ respective approaches for the bulk of the subfactors. Thus, for most of the evaluation subfactors, the firms’ proposals all were assessed as being green/acceptable with low risk (the one exception is the management practices subfactor, for which, as noted above, Jacobs’s proposal received a blue/exceptional with low risk rating) and, to the extent that strengths or weaknesses were identified, these strengths and weaknesses apparently did not affect the acceptable ratings the

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Approach Subfactor, at 1. Similarly, the worksheets for the proposal risk subfactors provided a space for an evaluator to describe “what is offered”; to indicate whether the proposal risk was high, moderate, or low; to identify strengths, uncertainties, and deficiencies; and to indicate whether an evaluation notice (EN) was required. See, e.g., AR, Tab 12, SRA Initial Proposal Risk Evaluation Worksheets for the Technical Approach Subfactor, at 2.

¹⁴ One of the Air Force’s evaluators testified:

If it was just green, low, there was nothing to document. It met the requirement. It met the definition. So we did the evaluation sheet for no comment for the completion of the record so at least there was something there that said we considered that, we had no comments, there were not strengths or weaknesses but here’s my evaluation sheet. That’s what the “NC” on it. Trying to fulfill that requirement, that’s why we did those sheets, to ensure that there was a documented record.

Tr. at 423. Other hearing testimony indicated that the individual evaluator worksheets for each of the mission capability subfactors began with a “default” rating of green/acceptable with low risk rating. See Tr. at 800-02.

firms received for these factors. In addition, these consensus documents and the source selection decision do not explain why strengths and weaknesses that were initially identified by various SSET members were ultimately determined not to be strengths or weaknesses.

Because the contemporaneous record was not sufficiently documented to allow us to review the reasonableness of the agency's evaluation judgments in light of the protesters' contentions, we conducted a hearing to elicit testimony from a number of the SSET evaluators and from the SSA. Although the hearing testimony provided additional explanation of the agency's evaluation judgments, the testimony, as detailed below, failed to establish the reasonableness of the agency's evaluation. Rather, the record establishes that the SSET failed to qualitatively assess the merits of SRA's, BAH's, and Jacobs's technical proposals under the bulk of the mission capability/proposal risk subfactors, even where the evaluators recognized that the firms proposed differing approaches. Instead, the SSET's evaluation concluded for the most part that the firms' proposals would merely satisfy the agency's requirements, and in many cases and without explanation, did not credit, documented strengths found by individual evaluators. This evaluation methodology was apparently driven, in part, by the way that the SSET applied a definition of "strength"¹⁵ that discounted the relative merits of the offerors' varying approaches.¹⁶ This, we find, was inconsistent with the RFP's evaluation scheme that, as noted above, provided for assessing the "degree to which" the offerors' proposals met or

¹⁵ Strength was defined by the agency to be:

A significant, outstanding, or exceptional aspect of an offeror's proposal that has merit and exceeds the specified performance or capability requirements in a way that is advantageous to the Government, and either will be included in the contract or is inherent in the offeror's process.

AR, Tab 30, SSET Decision Briefing to the SSA, at 9. Our concern relates not to the definition itself, but rather to the way it was applied during the evaluation.

¹⁶ Although not completely clear, hearing testimony indicated that, as interpreted by the SSET, superior and/or beneficial features of an offeror's proposal could not be considered strengths because they would either not be captured in the contract document or were considered "part of [the offeror's] inherent business process." See, e.g., Tr. at 430-31, 446. The discounting of the offerors' apparent strengths because they were part of the offerors' "inherent business process" appears to be inconsistent with the agency's definition of strength, which provided that "significant, outstanding, or exceptional aspect[s] of a proposal" that are "inherent in the offeror's process" should be regarded as strengths. See AR, Tab 30, SSET Decision Briefing to the SSA, at 9.

exceeded the agency's requirements under each of the mission capability/proposal risk subfactors. Moreover, as further detailed below, the record indicates that there may have been material factual errors in the evaluation as presented to the SSA.

Transition Planning Subfactors Evaluation

The protesters' and intervenor's proposals were all evaluated as green/acceptable with low proposal risk under the transition planning subfactors, despite the fact that the SSET assessed Jacobs's "lack of current program knowledge" as a weakness under the proposal risk transition planning subfactor. In this regard, although SRA and BAH had staff and team members with considerable experience with ESC, Jacobs and its subcontractors did not. The record shows that, initially, the SSET assigned a moderate risk to this weakness because the evaluators found that "[c]onsiderable Government time and manpower will be needed to bring the contractor 'up to speed.'" See AR, Tab 26, SSET Initial Proposal Briefing to SSA, at 106. At that time, the SSET identified as "risk mitigators" Jacobs's proposed [Deleted]¹⁷ and use of its ISO-certified process¹⁸ to capture critical personnel to acquire program knowledge, but these mitigators did not cause the SSET to assess Jacobs's proposal as low risk under this subfactor. Id. Although not recorded as a risk mitigator, Jacobs also stressed in its oral presentation the firm's "proven ability to transition large enterprise contracts," and listed its "major transition experience." See AR, Tab 18, Jacobs Transition Planning Oral Presentation Slides, at 98-99, 125, 128.

The Air Force raised its risk concerns with Jacobs in discussions, and Jacobs reiterated its past experience in "effectively execut[ing] 12 large enterprise contracts like ETASS without having had any incumbent work" and offered, as a revised [Deleted]. See AR, Tab 21, Jacobs's Response to EN-004, at 1-2. Following discussions, the SSET reduced Jacobs's risk rating from moderate to low, primarily referencing that firm's "successful" experience in transitioning "over a dozen large organizations of the scale of ESC (personnel >700)." See AR, Tab 31, PAR, at 41; see Tr. at 564, 626-27.

The record does not reasonably show why Jacobs's risk rating was reduced to low under the transition planning subfactor based upon that firm's discussions responses that primarily reiterated information already provided to the agency in Jacobs's

¹⁷ Jacob's initial proposal described the firm's [Deleted]. AR, Tab 18, Jacobs Transition Planning Oral Presentation Slides, at 118.

¹⁸ "ISO" refers to a family of standards for quality management systems, established by the International Organization for Standardization, a non-governmental organization. The word ISO is derived from the Greek word "isos," meaning "equal." See www.iso.org.

initial proposal.¹⁹ The record also indicates that the SSET's risk assessment was based upon a material factual error, given that Jacobs's proposal identifies, as major transition experience, only two contracts of similar scale to the ETASS contract (that is, more than 700 personnel transitioned); the remainder of the contracts identified provided for transitioning many fewer personnel.²⁰ See AR, Tab 18, Jacobs's Transition Planning Oral Presentation Slides, at 98-99. Thus, the statements in the PAR and Source Selection Decision that "Jacobs has applied its transition processes to successful transitions in over a dozen large organizations of the scale of ESC (personnel >700)" appear to be factually inaccurate. See AR, Tab 31, PAR, at 40-41; Tab 33, Source Selection Decision, at 4. Moreover, as the protesters note, the record does not show that the evaluators considered the relevance of Jacobs's past transition experience in terms of whether it involved similar transition plans or techniques. See, e.g., Tr. at 654-55. In this regard, the PCAG found that the two contracts that were of similar scale to the ETASS contract (that is, more than 700 personnel transitioned) were only "somewhat relevant" and "not relevant," respectively. See AR, Tab 40, Jacobs's Past Performance Spreadsheet.

Furthermore, the SSET's final evaluation found, with regard to Jacobs's transition planning, that considerable government time and manpower could be needed to bring the contractor "up to speed," even after application of the identified risk mitigators. AR, Tab 31, PAR, at 40. Nevertheless, the SSET's final evaluation found Jacobs's proposal to be low risk under the proposal risk transition planning subfactor. *Id.* at 41. This appears to be inconsistent with the definition of "low" risk contained in MP5315.3 § 5.5.2, incorporated into the RFP, which defined low proposal risk as reflecting a proposal that had "little potential to cause disruption of schedule, increased cost or degradation of performance. Normal contractor effort and normal government monitoring will likely be able to overcome any difficulties."

In sum, the record does not demonstrate the reasonableness of Jacobs's green/low risk rating under the transition planning subfactors.

The record also indicates that the agency did not reasonably assess the "degree to which" the offerors, in their transition planning, had "proposed a comprehensive,

¹⁹ We recognize that Jacobs revised its proposed [Deleted] in response to discussions, but the record indicates that this was not a significant factor in the agency's revised risk assessment. See AR, 33, Source Selection Decision, at 4; see also Contracting Officer's Statement (SRA Protest) at 19 (the "primary reasons for Jacobs' low risk in the transition [planning] subfactor were its ISO-certified transition process, and its proven track record of performance in transitions of similar and larger sizes").

²⁰ In its EN response, Jacobs identified only one contract having a scale similar to the ETASS contract and only two contracts that it transitioned. AR, Tab 21, Jacobs Response to EN-004, at 1-2.

detailed, effective plan” and “demonstrate[d] the capability to have available resources needed to efficiently and effectively support the [ETASS] objectives,” as required by the RFP’s evaluation criteria. See RFP § M.3.1.2(A), (B). Both SRA and BAH proposed current staff and teams that had significantly more ESC experience than did Jacobs, and this difference was at the core of the SSET’s concern that Jacobs’s lacked current program knowledge, which Jacobs proposed to acquire through substantial hiring of personnel working on the ITSP II task orders.²¹

Besides the protesters’ inherent incumbent-based advantages under these subfactors, the record shows that apparent proposal strengths were identified for both SRA’s and BAH’s proposals by individual evaluators with regard to the transition planning subfactors based on these firms’ proposed detailed and comprehensive transition plans, but these strengths were not adopted by the SSET for reasons that were not reasonably explained.

Specifically, one evaluator noted, as a strength in SRA’s proposal, that the firm had presented a comprehensive, detailed and effective transition plan that, among other things, “[Deleted].” Also, the evaluator cited SRA’s use of its [Deleted] software tool to assist in transition. Further, the evaluator noted that “the SRA Team will incorporate a transition launch initiative that will ensure a seamless transition of people, practices, and projects, and ensure no disruption.” AR, Tab 12, SRA Initial Mission Capability Evaluation Worksheets for the Transition Planning Subfactor, at 5-6. In its consensus judgment, however, the SSET did not agree that this was a strength that should be reported, but determined that it should instead be treated as a risk mitigator, although SRA’s proposal risk for this subfactor was already assessed as low with no weaknesses identified. Id.; Tr. at 646-47 (the SSET decided that SRA’s approach did not satisfy the agency’s definition of strength).

With respect to the evaluation of BAH’s proposal under the mission capability transition planning subfactor, one evaluator noted as a strength that BAH proposed a “transition strategy that allows for a superior retention rate of critical experience

²¹ Much argument has been provided regarding the extent to which the ITSP II work is similar or dissimilar to the work to be performed under the ETASS contract. The fact remains that, although the ETASS contract will have a broader scope of work than did the ITSP II task orders, see Tr. at 16, the evaluators treated work under the ITSP II as essentially “incumbent” work. See, e.g., Tr. at 549-50, 552-53, 642-44. In this regard, Jacobs’s [Deleted], which the Air Force viewed as a risk mitigator, is predicated upon Jacobs’s obtaining program knowledge from personnel working under the ITSP II task orders. See AR, Tab 18, Jacobs’s Transition Planning Oral Presentation Slides, at 96 (“Jacobs recognizes the contributions the current ITSP II workforce has made to ESC. We value the skills and knowledge inherent in the incumbent employees and will give priority for employment on the new ETASS contract should we be chosen for the award.”)

and corporate knowledge through strategic teaming,” and that this would ensure a “smoother, faster, and more efficient transition period” and result in “overall positive effects on program risk, schedule, and cost.” AR, BAH Protest, Tab 12, BAH Initial Mission Capability Evaluation Worksheets for the Transition Planning Subfactor, at 13. As with the strength identified for SRA’s proposal under this subfactor, the SSET decided, but did not document, that this was not a strength.

We recognize that it is not unusual for individual evaluator ratings to differ from one another, or to differ from the consensus ratings eventually assigned. See Cube-All Star Servs. Joint Venture, B-291903, Apr. 30, 2003, 2003 CPD ¶ 145 at 11 n.21. The overriding concern for our purposes is not whether the final ratings are consistent with earlier, individual ratings, but whether they reasonably reflect the relative merits of the proposals. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 2 n.1. Here, the consensus evaluation record does not document the differences in the firms’ proposals or explain why seemingly warranted strengths identified by the evaluators were not adopted by the SSET. This lack of documentation was caused in part by the fact that the SSET recorded its consensus deliberations for each subfactor on “white boards,” “capturing the positive and negative aspects” of proposals on those boards, but the boards were erased after the SSET had reached a consensus judgment. See Tr. at 236, 420-25.

As noted above, ultimately the proposals of SRA, BAH, and Jacobs all received the same green/acceptable with low risk rating under the transition planning subfactor. Although the SSA was informed of the weakness identified in Jacobs’s proposal with respect to its lack of current program knowledge as it related to transition planning, the record does not establish that the agency considered the differences in the firms’ proposals for transition planning.²² That is, based on the record, SRA’s and BAH’s proposals appeared to provide superior approaches to transition planning to that offered by Jacobs, but the SSET ultimately concluded, applying its narrow interpretation of what it considered a strength, that all of the firms’ proposals merely met the agency’s requirements. See, e.g., Tr. at 618 (BAH’s “superior retention of critical experience and corporate knowledge” was “one means of meeting the requirements” and “[i]t was a very good approach, but it was an approach. It met the requirement”); see also Tr. at 665-66 (“If I had gradations of risk, yes [BAH’s and SRA’s proposals] had lower risk” under the transition planning subfactor because those firms would “have to do less hiring of folks with the knowledge of the ESC

²² In his hearing testimony, the SSA appeared to remember that there were differences in the firms’ approaches to transition planning, but he could not recall with any specificity those approaches or whether or not there were any advantages offered by SRA’s and BAH’s approaches. The SSA’s testimony established that he had little present recollection of this procurement, which we find understandable given the passage of time and his involvement in many other source selections since the time of his selection decision here. See, e.g., Tr. at 346, 356.

program”). Absent from the record is any meaningful explanation from the agency or intervenor as to why the firms’ differing transition approaches (which were admittedly based largely upon differing amounts of incumbent staff and program knowledge) should not have been considered under these evaluation subfactors.

Based on this record, we find the agency did not reasonably evaluate the offerors’ proposals under these subfactors.

Technical Approach Subfactors Evaluation

As with the transition planning subfactors, the protesters’ and intervenor’s proposals were all evaluated to be green/acceptable with low proposal risk under the technical approach subfactors. Here too, the evaluators noted differences in the relative merits of the firms’ respective proposals under these subfactors, but apparent strengths identified by the evaluators in SRA’s and BAH’s proposals were not fully “captured” by the SSET in its consensus evaluation. As with the transition planning subfactors, the record shows that the evaluators recognized that there were differing technical approaches, see AR, Tab 31, PAR, at 36-37, but there is no evidence that the SSET did more than find all of the various approaches satisfied the agency’s requirements.

With respect to SRA, among the strengths initially noted by individual evaluators in the firm’s proposal under these subfactors, was SRA’s proposal of its [Deleted] software tool:

Convenient and accessible web-based forum for capturing knowledge, best practices, and standard/tailored technical processes for use across the ESC community. [Deleted] will host the tailored ESC CMMI-based process asset library (PAL) and be the portal for all ESC personnel to access process related information and best practices. . . . The [Deleted] knowledge will be kept at ESC at the end of the ETASS contract. [Deleted] provides an enhanced capability to access current, applicable information and guidance as a single authoritative source for use by the ESC community.

See AR, Tab 12, SRA Initial Mission Capability Worksheets for Technical Approach, at 17. The SSET concluded, however, that this was not a proposal strength apparently because all of the offerors proposed some form of software tool that was similar to SRA’s [Deleted] software. See Tr. at 140 (“we could have given everybody a strength or nobody a strength”); see also Tr. at 141-42, 250. This strength was not presented to the SSA.

The agency has provided no cogent explanation as to why this aspect of SRA’s approach was not a strength that should have been presented to the SSA for his consideration. Even accepting the agency’s contention that other offerors proposed

similar software tools, we would have expected, as contemplated by the evaluation methodology, some assessment of the merits of those firms' proposed software tools. This was not done here. Furthermore, we note that there is no similar strength for, or even a description of, software tools noted in any of the evaluators' worksheets for Jacobs or BAH.

With respect to BAH's proposal, one evaluator noted a number of strengths in that firm's proposal under the mission capability technical approach subfactor, including BAH's offer of "over 40 state-of-the-art Lab Facilities which provide significant innovations and additional capabilities that may be leveraged by ESC Organizations in support of our engineering/technical services objectives"; its "facilitat[ation of] senior-level access [to] help build bridges for ESC across the stakeholder community resulting in the improved coordination, communication and interoperability with other C4I programs"; and its "demonstrat[ion of its] clear and detailed understanding of the ETASS objectives by the delineation of [its] understanding of the requirement, the inputs required for the objective, the personnel/skills required, the process steps, the tools/techniques and output/products." AR, BAH Protest, Tab 12, BAH Initial Mission Capability Worksheet for Technical Approach, at 1-2. Assessed as a strength under this subfactor by another evaluator was BAH's proposal of Wing Technical leads at the "IDIQ Enterprise, that are not directly chargeable to the Gov't," which "is a strength because it provides resources to significantly enhance mission integration horizontally and vertically, promoting overall ESC objectives for integration." *Id.* at 4. Although three of these apparent strengths were identified by the SSET in its consensus judgment, the assessment that BAH had demonstrated a clear and detailed understanding of the ETASS objectives was not because the SSET ultimately concluded that this merely satisfied its requirement.

Given that the RFP informed offerors that the agency would evaluate the "degree to which the offeror presents a clear understanding and an innovative approach to fulfill all the objectives outlined in the ETASS IDIQ SOO" under these subfactors, RFP § M.3.1.1., we find no support in the record for the SSET's conclusion that BAH's demonstration of its clear and detailed understanding of the ETASS objectives should not have been reported as a strength or considered in the agency's assessment of the merits of the firms' proposals. Rather, although the evaluators found that BAH proposed a "clear understanding of the [ETASS] objectives" and strong approach to satisfying them, the record does not explain why the SSET found that BAH's approach would merely satisfy the agency's requirements. *See* Tr. at 287-88.

Further, the Air Force has failed to persuasively rebut BAH's contention that Jacobs did not similarly demonstrate a clear understanding and approach to fulfilling all of the ETASS objectives. Specifically, BAH contends that Jacobs's technical approach proposal presented a generic, standard systems engineering methodology that did not specifically address how the firm would satisfy the ETASS objectives. *See* BAH Comments at 13; BAH Post-Hearing Comments at 11. Although the agency and

intervenor vehemently disagree with BAH's assertion, the record shows that the agency recognized that there were differences in BAH's and Jacobs's approaches, see AR, Tab 31, PAR, at 36, but did not consider as required by the RFP the degree to which they demonstrated an understanding and approach to satisfying the ETASS objectives.

We also find troubling a January 30, 2007 memorandum for record, which indicates that a material misstatement of fact may have been made to the SSA. This document, which was prepared by the contracting officer, memorializes certain discussions between the SSET and the SSA. With respect to the SSET's rating of BAH's technical approach, the SSA asked what it would take for BAH to get a blue/exceptional rating.

Specifically he wanted to know if the labs presented are connected back to ESC and would that be a good thing. A member of the SSET stated that the labs are connected back to ESC (the [Global Information Grid]), labs currently have work with [the Defense Information Systems Agency] and [the Space and Naval Warfare Systems], and they could be of benefit to ESC. [The SSET Chair] stated that their technical approach did not rise to a blue. He stated that if they could have connected to all 13 SOO requirements instead of the 3 or if they could have provided more examples, it could have become a blue.

AR, Tab 50, Memorandum for Record, Jan. 30, 2007, at 1. In contrast to this statement, as pointed out by BAH, the firm's proposal was found by the agency to have described a detailed approach that satisfied all of the 13 SOO objectives. BAH Post-Hearing Comments at 18-19; see AR, Tab 31, PAR, at 7.

Testimony elicited at the hearing from an agency witness explained that the statement "that if they could have connected to all 13 SOO requirements instead of the 3 or they could have provided more examples, it could have become a blue" did not refer to BAH's proposal but to another offeror's proposal. Tr. at 451-52. Although counsel disagree whether this error reflects an inaccurate account by the contracting officer of the statements made to the SSA or whether the document accurately recounts a misstatement of fact to the SSA, beyond the document itself there is no evidence that would allow us to determine what the SSA was actually told. That is, the witness, who testified that the statement in the memorandum was in error, was not present at the briefing recorded in the memorandum, see Tr. at 309-10, and the SSA did not recall the discussion recorded in the memorandum. Tr. at 352, 355. No other testimony, statements or evidence have been provided, such as from the contracting officer or SSET chair, to otherwise explain this document. Accordingly, we conclude that the SSA may have been provided with inaccurate information that reasonably could have affected his judgment as to the relative merits of the firms' proposals.

Personnel Subfactors Evaluation

As with the transition planning and technical approach subfactors, the protesters' and intervenor's proposals were all evaluated as green/acceptable with low proposal risk under the personnel subfactors. SRA complains that the agency failed to assess in any meaningful way the differences in the firms' proposals under these subfactors, particularly with respect to the firms' ability to provide personnel with C4ISR knowledge and experience.

As indicated above, the RFP provided that for the mission capability/proposal risk personnel subfactors the agency would evaluate, among other things, the degree to which the firms proposed sound, realistic, and standardized approaches to obtaining, training, and retaining qualified personnel. RFP § M.3.1.3(A). In this regard, the RFP required that the contractor provide personnel with "knowledge of, and experience with, [C4ISR] both airborne and ground, and information systems for the Air Force and Department of Defense components." *Id.*, SOO, § 3.1.a.

Here too, the record simply does not evidence that reasonable consideration of the "degree" to which the offerors' proposed approaches would satisfy the contract objectives, including providing personnel with C4ISR knowledge and experience. In this regard, the hearing testimony merely confirmed that, although the SSET was aware that there were differences in the firms' approaches under these subfactors, *see* Tr. at 713, the SSET determined that all of the offerors' approaches satisfied the "government's minimum requirements and offered acceptable approaches for bringing people on." Tr. at 764. In this regard, the SSET did not discuss or consider whether the relative level of C4ISR experience could be a discriminator between Jacobs's and SRA's proposal under these subfactors or, in that regard, whether SRA would have any proposal advantage because of the SRA team's large incumbent staff with C4ISR experience.²³ *See* Tr. at 746, 759.

The Air Force argues that "corporate C4ISR experience" is not a contract requirement or source selection criterion. Air Force Post-Hearing Comments at 41. This argument misses the point. SRA's protest contention is not that it has more corporate C4ISR experience than does Jacobs, but that the RFP provided for a qualitative assessment of the offerors' approaches to providing qualified personnel, including personnel with C4ISR knowledge and experience. The record does not show that such an assessment was done, as called for by the RFP's evaluation scheme.

²³ SRA states that one member of its team is "Dynamics Research Corporation ('DRC'), which is the incumbent ESC C4ISR planning subcontractor," and "DRC will 'provide Communications Engineers, Integration Engineers, Logistics Specialists, IA, and Test Engineers.'" SRA Comments and Supplemental Protest at 23-24.

Management Practices Subfactors Evaluation

In contrast to its evaluation of SRA's, BAH's, and Jacobs's proposals under the other mission capability and proposal risk subfactors, the SSET assessed Jacobs's proposal as superior to SRA's and BAH's under the management practices subfactors, because Jacobs proposed "the best overall team management, business practices, and organizational structure to properly and effectively administer ETASS" and "Jacobs had no administrative burden to the Government or negative performance effects on the contract related to [OCI] mitigation." AR, Tab 31, PAR, at 51. With respect to OCIs, the agency concluded that both SRA's and BAH's proposals reflected potential OCI concerns, which the offerors adequately mitigated. Id.

The protesters object that the Jacobs's exceptional/low risk ratings under these subfactors were the result of an unequal evaluation, which focused on the fact that Jacobs posed no OCI concerns.²⁴ In this regard, the protesters complain that the agency failed to reasonably evaluate the differentiating features of their team management structures.

There is little documentation in the record with respect to the SSET's evaluation of the soundness of the firms' approaches for overall team management, business practices, and organizational structure. Although the PAR generally described each firm's proposed structures and practices, and assessed as a proposal strength Jacobs's "seamless teaming" approach, there is no analysis of the merits of the other proposals' varying approaches.

For example, one evaluator noted that SRA proposed the use of CMMI Level 3 processes to perform the contract and that the firm had demonstrated "soundness in configuration management, process planning, metrics planning, and execution and control." See AR, Tab 12, SRA Initial Mission Capability Worksheet for Management Practices, at 18. Although the PAR reported SRA's proposed use of CMMI Level 3 policies and processes in a general description of SRA's proposal under this subfactor, there is no analysis of the merits of SRA's approach. In this regard, the agency's witness, who was offered to testify regarding the management practices subfactors, was unable to provide any cogent testimony as to the differences in

²⁴ The protesters contend that Jacobs's lack of potential OCIs was the SSET's overriding focus in determining that superiority of Jacobs's proposal under this factor. Although the SSA testified that Jacobs's lack of potential OCIs was not the basis of the selection of that firm's proposal for award, see Tr. at 361, other hearing testimony lends support to the protesters' views. See, e.g., Tr. at 207. However, potential OCI issues are only one part of what was to be evaluated under these subfactors.

SRA's management structure and approach and Jacobs's proposed "seamless team" management structure.²⁵ See, e.g., Tr. at 809-12.

While on this record we do not believe that the Air Force lacked a reasonable basis for finding Jacobs's proposal exceptional/low risk under the management practices subfactors, here too the record evidences that the agency did not consider the relative merits of Jacobs's proposal vis-à-vis the protesters' proposals.

Mission Capability and Proposal Risk Subfactors Evaluation Conclusion

Where, as here, the RFP states a best value evaluation plan—as opposed to selection of the lowest priced, technically acceptable offer—evaluation of proposals is not limited to determining whether a proposal is merely technically acceptable; rather, proposals should be further differentiated to distinguish their relative quality under each stated evaluation factor by considering the degree to which technically acceptable proposals exceed the stated minimum requirements or will better satisfy the agency's needs. See The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 8; Johnson Controls World Servs., Inc.; Meridian Mgmt. Corp., B-281287.5 et al., June 21, 1999, 2001 CPD ¶ 3 at 8. In fact, we have long stated that evaluation ratings should be merely guides for intelligent decision-making, see Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11, and that therefore evaluators and SSAs should reasonably consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation. See MD Helicopters, Inc.; AgustaWestland, Inc., B-298502 et al., Oct. 23, 2006, 2006 CPD ¶ 164 at 15. Indeed, as indicated above, the FAR requires that agencies sufficiently document their judgments, including documenting the relative strengths, deficiencies, significant weakness, and risks supporting their proposal evaluations. See FAR §§ 4.801(b), 15.305(a), 15.308; Century Envntl. Hygiene, Inc., supra, at 4.

Here, given the nearly complete absence in the record of any assessment of the firms' different approaches under the mission capability and proposal risk subfactors

²⁵ In the hearing, SRA's counsel directed the evaluator to SRA's oral presentation slides, where SRA stated that it would flow-down established CMMI Level 3 policies and procedures to subcontractors and have a "fully integrated, badgeless approach." See AR, Tab 11, SRA Management Practices Oral Presentation Slides, at 103. The evaluator testified that "[i]t's not clear what established SRA CMMI policies and procedures are flowing down. And also, we [presumably the SSET] did not know what a badgeless approach was." Tr. at 810. To the extent the SSET had questions about what SRA was proposing, SRA was not asked to explain its management practices approach either during the question and answer portion of the oral presentation or through discussions. Tr. at 811.

(as noted above, the SSET did assess Jacobs's proposed "seamless team" approach and lack of OCIs as proposal strengths, justifying a blue/excellent rating with low risk under the management practices subfactors), we find that the SSET failed to evaluate the firms' proposals under these subfactors consistent with the RFP, which we find prevented the SSA from meaningfully weighing the relative merits of the offerors' proposals. In this regard, the SSA indicated in his testimony that it was his practice in making selection decisions to look beyond the color/adjectival ratings in weighing the offerors' proposals, see Tr. at 323-25, and the contemporaneous record evidences that the SSA attempted to look beyond the adjectival ratings here to ascertain the relative quality of the firms' technical proposals. See, AR, Tab 50, Memorandum for Record, Jan. 30, 2007. However, we do not find that the SSA was provided with a reasonable opportunity to do so here, given the SSET's failure to qualitatively assess the merits of the offerors' proposals, as required by the RFP.²⁶ See Tr. at 330-39.

Accordingly, since the record evidences that the agency did not evaluate the proposals under the mission capability and proposal risk subfactors in a way that reasonably distinguished their relative merits in accordance with the RFP's evaluation scheme, we sustain the protests.

Past Performance Factor Evaluation

The protesters also object to the evaluation of the firms' past performance by the agency's PCAG. Both SRA and BAH complain that the agency treated the firms unequally with respect to the relevance of their own and their subcontractors' respective past performance, and contend that they should have received higher confidence ratings than Jacobs based upon their more specific experience supporting the ESC.

We find from our review of the record no basis to object to the Air Force's past performance evaluation. Rather, the contemporaneous documents, along with the agency's explanations during the protest, demonstrate a careful consideration of the relevance and quality of the offerors' past performance. Although the protesters disagree with the agency's assessed past performance confidence ratings, as illustrated by the following examples, we find no basis to conclude that the agency's judgment in this regard was unreasonable. See TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 10.

For example, SRA contends that the PCAG "double-counted" Jacobs's past performance to determine that Jacobs had exceptional performance on three highly relevant contracts: the Technical and Engineering Acquisition Support contract, the

²⁶ This is particularly problematic given the SSA's judgment that this was a very close competition. See Tr. at 386.

Engineering Support Services (ESS) II contract, and the ESS contract.²⁷ SRA complains, however, that the agency credited Jacobs for both the ESS II and ESS contracts based upon a single past performance questionnaire that was for only the ESS II contract. SRA Comments and Supplemental Protest at 64.

The Air Force responds that, although the PCAG did rely upon a single past performance questionnaire from the contracting officer for both contracts, the questionnaire identified that it was for both the ESS II and ESS contracts. See AR, Tab 42, Jacobs Past Performance Questionnaires, at 122-33. From our review of that document, we agree with the agency that the questionnaire is not ambiguous, as suggested by SRA, but identifies both contracts by contract numbers, contract types (one is a cost-plus-award-fee contract and other is a cost-plus-fixed-fee), and contract values. In addition to the questionnaire, the PCAG considered, with respect to the older ESS II contract, information from the Contractor Performance Assessment Reporting System (CPARS) and an additional questionnaire from a program manager. We conclude that the agency did not improperly “double-count” Jacobs’s past performance under these two contracts.

As another example, BAH complains that it should have received a higher confidence rating because several of the contracts (that is, the Program Management Team Omnibus (PMTO) contract with the Department of the Navy and the Technical, Engineering, Fabrication, and Operational Support Services (TEFOS) with the Department of the Army’s Communications-Electronics Command) that it identified for past performance were multi-center engineering contracts involving C4ISR, which BAH asserts should have been evaluated as highly relevant, and not merely relevant.²⁸ Similarly, BAH complains that its subcontractor’s ITSP II work should have been rated better than merely relevant, because it is the same work as will be performed under the ETASS contract.

The agency responds that, although the PMTO contract supports a C4ISR activity, the primary focus of the PMTO contract is non-technical, program management work, and not the type of engineering and technical support contemplated in ETASS. The agency also explains that it reviewed BAH’s proposal’s description of the PMTO contract, but also obtained information from the CPARS and from Navy web-sites for this contract. With respect to the TEFOS contract, the Air Force states that this contract, which supports a C4ISR activity similar to ESC, was not of the same magnitude or complexity as the ETASS work. Contracting Officer’s Statement (BAH

²⁷ The ESS contract followed the ESS II contract. AR, Tab 30, SSET Decision Briefing to the SSA, at 354.

²⁸ The PCAG assigned quality ratings of excellent and very good, respectively, to BAH’s performance under those contracts. AR, Tab 30, SSET Decision Briefing to SSA, at 209.

Protest) at 35. With respect to the ITSP II work, the agency recognized that it was the same type of work that would be performed under the ETASS contract, but each of the ITSP II task orders focused on a single program and was of a smaller magnitude than the ETASS requirement. *Id.* at 35-36. Although BAH disagrees with the agency's past performance evaluation concerning the relevance of these contracts, it has failed to show that the agency's judgment was unreasonable.

Overall, based on our review, we find the agency's past performance evaluation to be reasonable.

Cost/Price Evaluation

SRA protests that the agency failed to conduct a reasonable cost realism evaluation of Jacobs's proposal. Specifically, SRA argues that Jacobs's proposed labor rates are unrealistically low and should have been upwardly adjusted. SRA Comments and Supplemental Protest at 5.

We first disagree with the protester that the RFP provided for a cost realism evaluation that would result in probable cost adjustments of the offerors' fixed labor rates.²⁹ Rather, we find that the RFP, read as whole, provided for a price realism analysis and informed offerors that unrealistically low "costs" might be considered with respect to the offeror's understanding of the technical objectives. RFP § M.3.3.4.

Although realism of cost or price is not ordinarily considered in the evaluation of proposals for a fixed-price contract, an agency may provide for the use of a price realism analysis in a solicitation for the award of a fixed-price contract for such purposes as measuring an offeror's understanding of the solicitation's requirements and assessing the risk inherent in an offeror's proposal. Consolidated Eng'g Servs., Inc., B-279565.5, Mar. 19, 1999, 99-1 CPD ¶ 76 at 10. The nature and extent of such a price realism analysis ultimately are matters within the sound exercise of the agency's discretion, and our review of such an evaluation is limited to determining whether it was reasonable and consistent with the solicitation's evaluation criteria. Citywide Managing Servs. of Port Washington, Inc., *supra*, at 4-5. Although a price realism analysis, if conducted, may affect the technical evaluation, it cannot properly lead to adjustment of the firms' fixed prices. FAR § 15.404-1(d)(3); Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 6 n.3.

²⁹ Although the ETASS contract will provide for the award of cost reimbursement task orders, the RFP did not request that offerors submit proposed costs for these task orders or provide that such costs would be evaluated for cost realism, and stated that the "Cost Reimbursable effort will be evaluated at the amount provided by the Government in the RFP." RFP § M.3.3.2.

Here, the record shows that the agency's cost team reasonably assessed the realism of Jacobs's proposed fixed labor rates by comparing those rates to rates obtained from the Bureau of Labor Statistics Occupational Employment Statistics wages estimates, from the FSS professional engineering services schedule, and from the ITSP II program. The cost team also computed an average fully loaded labor rate and an average direct loaded labor rate for each offeror and compared those rates. See AR, Tab 30, SSET Decision Briefing to SSA, at 122-23. The cost team found that Jacobs's fully loaded labor rates were [Deleted], and were, in this regard, [Deleted]. However, the cost team also found that [Deleted]. Supplemental Contracting Officer's Statement (SRA Protest) at 6-7.

With respect to the realism of the firms' proposed labor hours and mixes, the CPRA team found that the protesters' and awardee's initially proposed labor hours and mixes, considering the firms' BOEs, were realistic based upon each firm's proposed technical approach to performing each task order. The record shows that the Jacobs's revised proposal was evaluated by the agency, which determined that the proposed labor hours and labor rates were reasonable and realistic. See AR, Tab 32, Price Competition Memorandum, at 6-8. While SRA believes that the agency failed to evaluate the realism of the offerors' proposed labor hours and labor hour mix in their revised price proposals, SRA does not identify what aspects of Jacobs's labor mix were assertedly unrealistic. Accordingly, we find no basis in the record to object to the agency's analysis of this aspect of Jacobs's proposal.

Small Business Subcontracting Plan

SRA and BAH also complain that Jacobs's proposal is unacceptable because it does not satisfy the RFP's mandatory small business subcontracting plan requirements. Specifically, they assert that Jacobs's proposal [Deleted], although the RFP required offerors to satisfy a goal of having 0.1 percent HUBZone participation.

The agency responds that the RFP did not provide an evaluation factor for small business subcontracting and participation. Contracting Officer's Statement (SRA Protest) at 53. Rather, the agency argues that the only solicitation requirement was for offerors to propose acceptable small business subcontracting plans. See SRA Legal Memorandum at 38. Here, Jacobs's proposed plan promised to [Deleted] the solicitation's goal for HUBZone subcontractors. AR, Tab 18, Jacobs Small Business Subcontracting Plan, at 4-2. This plan was found acceptable by the Small Business Administration (SBA) procurement center representative and the contracting officer. Id.; AR, Tab 36, SBA Letter to the Air Force, Nov. 22, 2006. We deny SRA's and BAH's protest in this regard.

Misleading Discussions

SRA and BAH also protest that the agency conducted misleading discussions with the protesters with respect to Task Order No. 7, supporting the Air Force's 554th Electronic Systems Wing (ELSW) and 643rd Electronic Systems Squadron, which caused SRA and BAH to substantially [Deleted] their proposed prices for this work, and allowed Jacobs to substantially [Deleted] its proposed prices.

The agency responds that the offerors' initial proposals evidenced a lack of common understanding with respect to this task order, given that the firms' proposals "significantly varied and varied substantially from what the government estimated would be necessary to perform" this work.³⁰ Contracting Officer's Statement (SRA Protest) at 11; AR, Tab 26, SSET Initial Proposal Briefing to SSA, at 127. Accordingly, the agency issued two solicitation amendments, the first of which replaced the task order SOO for Task Order No. 7 with a new task order SOO (that removed support for the 643rd Electronic Systems Squadron), and the second of which provided "budget constraint" information. Thereafter, as part of discussions, the Air Force issued a common EN to all offerors that stated

The Government is clarifying the requirements of ETASS support to the 554th [ELSW] with a revised [SOO], issued via [RFP] Amendment 0005. The support required in the SOO was modified to specify the required support within available budget constraints. As a result, the Government will not be issuing ENs based on previously proposed support to the 554th ELSW.

In your response to this EN specifically address 1) what support you propose given the constrained funding available (see constrained budget information provided in the 554th ELSW SOO), 2) identify any necessary support that may not be provided due to the constrained funding, and 3) identify the risks and your proposed mitigation plan associated with your proposed support given the constrained funding.

See, e.g., AR, EN-10 to Jacobs.

We find no basis to object to the agency's conduct of discussions here. The record shows that the agency believed that none of the offerors had proposed acceptable approaches to task order No. 7, see AR, Tab 26, Initial Proposal Briefing to SSA,

³⁰ Four offerors, including SRA and BAH, proposed [Deleted] hours than the government estimate for the Task Order No. 7 work, while Jacobs proposed [Deleted] hours than the government estimate. See AR, Tab 26, SSET Initial Proposal Briefing to SSA, at 124.

at 127-28, and the agency concluded that its requirements had not been adequately communicated to the offerors. Accordingly, the agency amended the SOO for task order No. 7 to better communicate its needs (as well as to remove support for the 643rd Electronic Systems Squadron) and to inform offerors of budget constraints in performing this work. Although SRA and BAH apparently believe that this required them to increase their prices (and suggest the EN was intended to benefit Jacobs), this common EN merely clarified the agency's requirements and provided the offerors with funding information. Read reasonably, the EN allowed offerors an opportunity to address how they would meet the agency's requirements, and, if such support would exceed the agency's constrained budget, what support could not be provided and the offerors' mitigation plans for addressing this.

Violation of Post-Employment Restrictions

BAH also protests that Jacobs proposed, as its [Deleted] for this contract, an individual who retired in October 2006 from the Air Force as a senior government official. BAH contends that this individual participated in BAH's discussion responses with the Air Force and "suggests" that he may have violated 18 U.S.C. § 207(c) (2000), which prohibits certain former senior government official from knowingly, "with the intent to influence," communicating with or appearing before any officer or employee of the department or agency in which that person served, for a period of 1 year after that individual's termination of service.

Whether or not this individual violated the post-employment restrictions of 18 U.S.C. § 207(c) is not within the purview of our Bid Protest Regulations. The provision at 18 U.S.C. § 207(c) is a criminal statute, the interpretation and enforcement of which are primarily matters for the procuring agency and the Department of Justice. Accordingly, this allegation is dismissed.³¹ See The Earth Tech. Corp., B-230980, Aug. 4, 1988, 88-2 CPD ¶ 113 at 8.

The protests are sustained.

We recommend that the Air Force perform a new evaluation consistent with this decision, reopen discussions, if necessary, and make a new source selection decision. If a firm other than Jacobs is selected for award, the agency should terminate Jacobs's contract. We also recommend that the agency reimburse the protesters for their reasonable costs of filing and pursuing the protests. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protesters' certified claims for costs, detailing

³¹ BAH does not contend that this individual had access to information that could have provided Jacobs with an unfair competitive advantage.

time expended and costs incurred, must be submitted directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

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